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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

PRESTON JONES and SHIRIN
DELALAT, on behalf of themselves, all
others similarly situated, and the general
public,

Plaintiffs,

v.

NUTIVA, INC.,

Defendant.

Case No: 3:16-cv-00711-HSG

**DECLARATION OF JACK
FITZGERALD IN SUPPORT OF
PLAINTIFF'S MOTION FOR
ATTORNEYS' FEES AND COSTS**

Date: July 13, 2017

Time: 2:00 p.m.

Place: Courtroom 2, 4th Floor

Judge: Hon. Haywood S. Gilliam, Jr.

I, Jack Fitzgerald, declare as follows:

1. I am a member in good standing of the State Bars of California and New York; and of the United States District Courts for the Northern, Central and Southern Districts of California, the Southern and Eastern Districts of New York, and the Western District of Wisconsin; and of the United States Court of Appeals for the Ninth Circuit. I make this declaration based on my own personal knowledge, in support of plaintiff's motion for attorneys' fees and costs.

2. The Law Office of Jack Fitzgerald, PC ("LOJF") timekeepers on this matter are myself, my partner, Thomas A. Canova, and associates Trevor M. Flynn and Melanie R. Persinger. Attached hereto as Exhibit A is a firm biography detailing the experience of LOJF's attorneys.

3. LOJF's practice is to keep contemporaneous records for each timekeeper and to regularly record time records in the normal course of business; and we generally kept time records in this case consistent with that practice. Moreover, LOJF's practice is to bill in 6-minute (tenth-of-an-hour) increments.

Counsel's Billing Rates

4. LOJF's current billing rates for the timekeepers on this matter are as follows.

Timekeeper	Rate
Thomas A. Canova	\$750
Jack Fitzgerald	\$650
Trevor M. Flynn	\$500
Melanie R. Persinger	\$440

5. These rates are, for Mr. Canova, myself, and Mr. Flynn, identical to rates approved on February 24, 2017, in *Cumming v. BetterBody Foods & Nutrition, LLC*, No. 37-2016-00019510-CU-BT-CTL (San Diego County Super. Ct.), an analogous class action against another coconut oil manufacturer. The decision of the Honorable Katherine Bacal, approving these rates, is attached hereto as Exhibit B.

6. These rates are also only slightly higher than rates approved for myself, Mr. Canova, and Ms. Persinger, more than a year ago, by the Honorable Magistrate Judge

Mitchell D. Dembin of the Southern District of California, in deciding a contested fee application in a non-class action case, which were as follows.

Timekeeper	Rate
Thomas A. Canova	\$725
Jack Fitzgerald	\$625
Melanie Persinger	\$400

Obesity Research Inst., LLC v. Fiber Research Int'l, LLC, 2016 WL 1573319, at *2 (S.D. Cal. Apr. 18, 2016).

7. Approximately a year and a half ago, on December 4, 2015, the Honorable Joan M. Lewis, of the San Diego Superior Court, approved the same rates for myself and Mr. Canova, and a rate of \$475 for Mr. Flynn, finding the rates “justified by prior awards in similar litigation and evidence . . . showing these rates are in line with prevailing rates in the community.” *Belardes v. Capay Inc.*, No. 37-2014-00041774-CU-MC-CTL, Order Granting Final Approval to Class Action Settlement (Cal. Super. Ct. Dec. 4, 2015). A true and correct copy of Judge Lewis’s order is attached hereto as Exhibit C.

8. The increase in LOJF’s rates since December 2015 is consistent with increases for the firm’s attorneys that have been approved by various courts over the past several years, as follows.

Mr. Fitzgerald

Date	Case	Rate Approved	# Months Ago	% Increase From Previous
May 2017	<i>Jones v. Nutiva, Inc.</i>	\$650 (requested)	-	-
February 2017	<i>Cumming v. BetterBody</i>	\$650	3	4%
April 2016	<i>Obesity Research Institute LLC v. Fiber Research International, LLC</i>	\$625	13	-
December 2015	<i>Belardes v. Capay Incorporated</i>	\$625	17	7.8%

Date	Case	Rate Approved	# Months Ago	% Increase From Previous
July 2014	<i>In Re Quaker Oats Labeling Litigation</i>	\$580	21	5.5%
March 2013	<i>Bruno v. Quten Research Institute, LLC</i>	\$550	37	4.8%
October 2012	<i>Gallucci v. Boiron, Inc.</i>	\$525	42	-
July 2012	<i>In re Ferrero Litigation</i>	\$525	44	-

Mr. Canova

Date	Case	Rate Approved	# Months Ago	% Increase From Previous
May 2017	<i>Jones v. Nutiva Inc.</i>	\$750 (requested)	-	-
February 2017	<i>Cumming v. BetterBody</i>	\$750	3	3.4%
April 2016	<i>Obesity Research Institute LLC v. Fiber Research International, LLC</i>	\$725	13	-
December 2015	<i>Belardes v. Capay Incorporated</i>	\$725	17	-

Mr. Flynn

Date	Case	Rate Approved	# Months Ago	% Increase From Previous
May 2017	<i>Jones v. Nutiva</i>	\$500 (requested)	-	-
February 2017	<i>Cumming v. BetterBody</i>	\$500	3	5.3%
December 2015	<i>Belardes v. Capay Incorporated</i>	\$475	17	-

Ms. Persinger

Date	Case	Rate Approved	# Months Ago	% Increase From Previous
May 2017	<i>Jones v. Nutiva</i>	\$440 (requested)	-	10%
April 2016	<i>Obesity Research Institute LLC v. Fiber Research International, LLC</i>	\$400	13	17.6%
July 2014	<i>In Re Quaker Oats Labeling Litigation</i>	\$340	21	7.9%
March 2013	<i>Bruno v. Quten Research Institute, LLC</i>	\$315	37	5%
October 2012	<i>Gallucci v. Boiron, Inc.</i>	\$300	42	-
July 2012	<i>In re Ferrero Litigation</i>	\$300	44	-

9. LOJF's rates are also consistent with recent case law reflecting the prevailing rates in the community for attorneys of similar experience, skill, and reputation.

10. In March 2017, the Honorable Edward M. Chen approved the following rates.

Name	Position	Admission Year	Rate
Colleen Bal	Partner	1993	\$785
David H. Kramer	Partner	1996	\$900
John L. Slafsky	Partner	1993	\$700
Kevin Spark	Senior Associate	2010	\$500
Peter C. Holm	Junior Associate	2014	\$425

Dropbox, Inc., Case No. 15-cv-01741-EMC, 2017 WL 914273, at *4 (N.D. Cal. March 8, 2017); *see also id.*, Dkt. No. 153 at 14; *id.*, Dkt. No. 154 at 8.¹ These rates compare favorably to Mr. Canova's rate of \$750, which is lower than each of the above partners, despite that he

¹ Compare Colleen Bal Linked In account (<https://tinyurl.com/ks3l2z3>); David H. Kramer Linked In account (<https://tinyurl.com/mny98xx>); John L. Slafsky Lawyer Biography (<https://tinyurl.com/mtdqcl4>).

1 graduated in 1985. Mr. Flynn likewise has three more years' experience than Mr. Sparks, yet
 2 has the same \$500 rate. And Ms. Persinger's \$440 rate is just \$15 higher than Mr. Holm's,
 3 despite her graduating in 2010 (and thus having the same amount of experience as Mr. Spark,
 4 who was approved for a higher rate of \$500).

5 11. In June 2015, the Honorable William H. Orrick approved a rate of \$640 for an
 6 associate with less than five years of experience, and a rate of \$710 for an associate with
 7 approximately six years of experience. *Wynn v. Chanos*, Case No. 14-cv-04329-WHO, 2015
 8 WL 3832561, at *2, *6 (N.D. Cal. June 19, 2015), *aff'd*, --- Fed. Appx. ----, No. 15-15639,
 9 2017 WL 1149508 (9th Cir. Mar. 28, 2017) (Mem.). This compares very favorably to Mr.
 10 Flynn's rate of \$500, because he has more experience than both associates, and nearly two
 11 years have passed since the *Wynn* decision.

12 12. In February 2015, the Honorable Laura Beeler approved the following partner
 13 rates:

Name	Position	Admission Year	Rate
Adam J. Gutride	Partner	1994	\$750
Seth A. Safier	Partner	1998	\$725
Jay Kuo	Partner	1994	\$700
Anothony Patek	Partner	2003	\$700
Marie McCrary	Associate	2008	\$450

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 19 *Miller v. Ghirardelli Chocolate Co.*, Case No. 12-cv-04936-LB, 2015 WL 758094, at *6 &
 20 n.3 (N.D. Cal. Feb. 20, 2015); *see also id.* Dkt. No. 148-1 at ¶¶ 70, 73-74. These rates compare
 21 favorably to my rate of \$650, and Mr. Canova's rate of \$750, not just because they were
 22 approved in similar consumer fraud class litigation more than two years ago, but also because
 23 we have similar or greater amounts of experience than Mr. Patek (for me), and Mssrs. Gutride,
 24 Safier, and Kuo (for Mr. Canova). Ms. McCrary's approved rate of \$450 when she had
 25 approximately 6.5 years' experience, compares favorably to Ms. Persinger's \$440 rate given
 26 that she has a commensurate level of experience and more than 2 years have passed since Ms.
 27 McCrary's rate was approved.
 28

Counsel's Time Billed

13. In calculating LOJF's reasonable lodestar for purposes of this fee application, we began with all timekeepers' raw records, which totaled 575.9 hours, then carefully reviewed all individual entries to reduce or eliminate entries that were related exclusively to proving damages (such as consultations with damages experts, or work relating to document subpoenas to retailers seeking sales information), or which appeared erroneous, excessive, duplicative, or administrative in nature. Following this, we reviewed each timekeeper's individual billing records and made best efforts to categorize each attorney's time into specific aspects of the litigation or tasks, then again reviewed the hours and made additional cuts in the exercise of billing discretion. In total, this review resulted in a reduction of 57.4 hours from LOJF's raw time records. I understand LOJF's co-counsel, Paul Joseph, engaged in a similar process, also reducing his hours.

14. Together, plaintiff's counsel's raw time records reflected 906.6 total hours.² From this, counsel cut 13.3 hours for work exclusively related to plaintiff's damages case, and an additional 48.5 hours in the exercise of billing discretion.

15. Attached hereto as Exhibit D are the detailed time records of plaintiff's counsel, arranged by timekeeper, then by date.

16. Attached hereto as Exhibit E are the detailed time records of plaintiff's counsel, arranged by task. The first page of the document sets forth a summary of the work, by task and timekeeper as follows.

² These raw time records did not reflect time that could be allotted to this case during regular status conferences between myself and Mr. Joseph, during which we discussed the status of several different coconut oil cases. Although I tracked that time generally, I did not make an effort to allocate it among the different cases. Based on my hours and the number of coconut oil cases Mr. Joseph and I are prosecuting together, however, I estimate I could reasonably attribute about 20 hours of time to this case (which would mean a corresponding 20 hours of Mr. Joseph's time).

		Biller (Timekeeper)						
Task	TAC	JF	TMF	MRP	PKJ	Total	%	
Investigation & Complaint	2.7	15.6	-	-	39.1	57.4	6.8%	
Case Management	2.1	16.2	0.5	-	2.7	21.5	2.5%	
Rule 12 Briefing	11.0	21.3	15.9	0.3	58.0	106.5	12.6%	
Written Discovery	3.0	66.5	19.9	38.3	16.4	144.1	17.1%	
Document Review & Deposition Preparation	3.2	164.7	24.9	3.5	112.4	308.7	36.5%	
Discovery Motion Practice	0.5	29.2	-	8.0	18.0	55.7	6.6%	
Expert Discovery	-	2.0	-	-	5.8	7.8	0.9%	
Motion for Partial Summary Judgment	-	27.9	3.1	2.6	9.8	43.4	5.1%	
Mediation & Settlement	10.5	24.8	-	-	64.4	99.7	11.8%	
Totals =	33.0	368.2	64.3	52.7	326.6	<u>844.8</u>		
% =	3.9%	43.6%	7.6%	6.2%	38.7%			

17. This action was filed on January 8, 2016, and we are seeking fees for work through March 20, 2017, a total of approximately 14 months. The 844.8 hours expended during that time for which we seek reimbursement is equivalent to approximately 60 hours per month. This compare favorably to the average hours billed per month in other consumer protection actions. *See MacDonald v. Ford Motor Co.*, 2016 WL 3055643, at *9 (N.D. Cal. May 31, 2016) (awarding fees for 1020.8 hours over fourteen months of litigation, a monthly average of 72.9 hours); *Miller*, 2015 WL 758094, at *6 (finding reasonable lodestar based on 2420.6 hours over 30 months of litigation, or a monthly average of 80.6 hours).

Class Counsel's Expenses

18. Plaintiff's counsel have incurred expenses prosecuting this matter, for which counsel seeks reimbursement, in the amount of \$27,773.97. Counsel does not seek reimbursement of some costs often billed to clients including photocopying, first class postage, and legal research.

